

109TH CONGRESS
2D SESSION

H. R. 6405

To improve long-term care.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 6, 2006

Mrs. WILSON of New Mexico introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To improve long-term care.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—SHORT TITLE;**
4 **FINDINGS**

5 **SECTION 101. SHORT TITLE; TABLE OF CONTENTS.**

6 (a) SHORT TITLE.—This Act may be cited as the
7 “Long-Term Care Improvement Act of 2006”.

8 (b) TABLE OF CONTENTS.—The table of contents of
9 this Act is as follows:

TITLE I—SHORT TITLE; FINDINGS

Sec. 101. Short title; table of contents.

Sec. 102. Findings.

TITLE II—LONG-TERM CARE FINANCING

Sec. 201. Long-term care awareness.

Sec. 202. Long-term care financing commission.

Sec. 203. Considerations in MedPAC recommendations on payment for skilled nursing facilities.

TITLE III—LONG-TERM CARE INSURANCE

Sec. 301. Treatment of premiums on qualified long-term care insurance contracts.

Sec. 302. Additional consumer protections for long-term care insurance.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Elimination of limitation on eligibility for supplemental security income benefits for persons living in publicly operated community residences, based on the number of residents served by the facility.

1 **SEC. 102. FINDINGS.**

2 The Congress finds the following:

3 (1) The United States needs a national strategy
4 for long-term care.

5 (2) Seventy-seven million baby-boomers will re-
6 tire by 2030.

7 (3) Long-term care is an ever-increasing pro-
8 portion of Medicaid spending.

9 (4) Encouraging planning, saving, and personal
10 responsibility will strengthen the Medicaid program
11 for other eligible populations.

12 (5) Thirty-two percent of Medicaid spending is
13 on long-term care and that number is expected to in-
14 crease over the next 20 years as baby-boomers begin
15 to retire.

1 (6) Four-fifths of projected increases in Med-
2 icaid expenditures are estimated to come from the
3 aged and disabled, who primarily have chronic dis-
4 eases and are in need of long-term care services.

5 (7) The United States as a whole must get
6 more private dollars into the long-term care system,
7 or else be saddled by skyrocketing costs to the gov-
8 ernment that risk the collapse of Medicaid.

9 **TITLE II—LONG-TERM CARE** 10 **FINANCING**

11 **SEC. 201. LONG-TERM CARE AWARENESS.**

12 (a) “OWN YOUR OWN FUTURE” LONG-TERM CARE
13 AWARENESS CAMPAIGN.—It is the sense of the Congress
14 that—

15 (1) the “Own Your Own Future” long-term
16 care awareness campaign established jointly in Jan-
17 uary 2005, and implemented in 8 states in 2006, by
18 Office of the Assistant Secretary for Planning and
19 Evaluation, the Administration on Aging, and the
20 Centers for Medicare & Medicaid Services (CMS),
21 working closely with the National Governors Asso-
22 ciation (NGA) and the National Council of State
23 Legislators, should be expanded and implemented in
24 all the States, and

1 (2) as part of such campaign, the Administra-
 2 tion on Aging should distribute, upon request, the
 3 document entitled “Long-Term Care Planning Kit”,
 4 originally published by the Department Health and
 5 Human Services as publication CMS–11026 (De-
 6 cember 2002) and as updated from time to time.

7 (b) “DAY FOR A NATIONAL CONVERSATION ON
 8 LONG-TERM CARE”.—

9 (1) DESIGNATION AND PROMOTION.—From
 10 among the holidays when families normally gather
 11 together, the Secretary of Health and Human Serv-
 12 ices shall designate 1 particular day each year as the
 13 “Day for a National Conversation on Long-Term
 14 Care” and shall provide public announcements and
 15 activities to encourage and facilitate the opportuni-
 16 ties for families to discuss aging and retirement
 17 preparation with family members who are older indi-
 18 viduals.

19 (2) AUTHORIZATION OF APPROPRIATIONS.—
 20 There is authorized to be appropriated \$2,000,000
 21 fore each of 5 fiscal years to carry out this sub-
 22 section.

23 **SEC. 202. LONG-TERM CARE FINANCING COMMISSION.**

24 (a) ESTABLISHMENT.—There is hereby established a
 25 commission to be known as the “Long-Term Care Financ-

1 ing Commission” (in this section referred to as the “Com-
2 mission”).

3 (b) COMPOSITION.—The Commission shall be com-
4 posed of 10 members appointed by the Comptroller Gen-
5 eral of the United States.

6 (c) DUTIES.—

7 (1) ANALYSES.—The Commission shall conduct
8 analyses of the financing of long-term care, includ-
9 ing the financing of nursing facilities. Such analyses
10 shall include an analysis of each of the following:

11 (A) The adequacy of Medicaid program fi-
12 nancing of the long term care system.

13 (B) Medicare’s cross-subsidization of long-
14 term care for Medicaid patients.

15 (C) Total industry margins in long-term
16 care.

17 (D) Long-term demographic challenges.

18 (E) The impact of current trends, includ-
19 ing staffing shortages and litigation costs, on
20 long-term care spending.

21 (F) Different approaches to refinements in
22 the per diem RUG payment amounts and re-
23 lated payment methodologies under section
24 1888(e) of the Social Security Act (42 U.S.C.
25 1395yy(e)) .

1 (2) REPORT.—The Commission shall submit to
 2 Congress an annual report on its analyses. Each
 3 such report shall include recommendations for such
 4 changes in financing of long-term care as the Com-
 5 mission deems appropriate.

6 (d) TERMS, COMPENSATION, CHAIRMAN, MEETINGS,
 7 STAFF, AND POWERS.—The provisions of subsections
 8 (c)(3), (c)(4), (c)(5), (c)(6), (d), and (e) of section 1805
 9 of the Social Security Act (42 U.S.C. 1395b–6) (relating
 10 to provisions for the Medicare Payment Advisory Commis-
 11 sion) shall apply to the Commission in the same manner
 12 as they apply to the Medicare Payment Advisory Commis-
 13 sion.

14 **SEC. 203. CONSIDERATIONS IN MEDPAC RECOMMENDA-**
 15 **TIONS ON PAYMENT FOR SKILLED NURSING**
 16 **FACILITIES.**

17 In making recommendations regarding payment rates
 18 for skilled nursing facilities, the Medicare Payment Advi-
 19 sory Commission (established under section 1805 of the
 20 Social Security Act, (42 U.S.C. 1395b–6)) shall con-
 21 sider—

22 (1) the operating margins of such facilities from
 23 all government payers and the adequacy of all gov-
 24 ernment funding; and

1 (2) the quality improvement efforts by such fa-
 2 cilities.

3 **TITLE III—LONG-TERM CARE** 4 **INSURANCE**

5 **SEC. 301. TREATMENT OF PREMIUMS ON QUALIFIED LONG-** 6 **TERM CARE INSURANCE CONTRACTS.**

7 (a) IN GENERAL.—Part VII of subchapter B of chap-
 8 ter 1 of the Internal Revenue Code of 1986 (relating to
 9 additional itemized deductions) is amended by redesign-
 10 ating section 224 as section 225 and by inserting after
 11 section 223 the following new section:

12 **“SEC. 224. PREMIUMS ON QUALIFIED LONG-TERM CARE IN-** 13 **SURANCE CONTRACTS.**

14 “(a) IN GENERAL.—In the case of an individual,
 15 there shall be allowed as a deduction an amount equal to
 16 the applicable percentage of the amount of eligible long-
 17 term care premiums (as defined in section 213(d)(10))
 18 paid during the taxable year for coverage for the taxpayer
 19 and the taxpayer’s spouse and dependents under a quali-
 20 fied long-term care insurance contract (as defined in sec-
 21 tion 7702B(b)).

22 “(b) APPLICABLE PERCENTAGE.—For purposes of
 23 subsection (a), the applicable percentage shall be deter-
 24 mined in accordance with the following table:

“For taxable years beginning in calendar year—**The applicable
percent-
age is—**

2006, 2007, or 2008	25
2009	35
2010	65
2011 or thereafter	100.

1 “(c) COORDINATION WITH OTHER DEDUCTIONS.—

2 Any amount paid by a taxpayer for any qualified long-
3 term care insurance contract to which subsection (a) ap-
4 plies shall not be taken into account in computing the
5 amount allowable to the taxpayer as a deduction under
6 section 162(l) or 213(a).”.

7 (b) LONG-TERM CARE INSURANCE PERMITTED TO
8 BE OFFERED UNDER CAFETERIA PLANS AND FLEXIBLE
9 SPENDING ARRANGEMENTS.—

10 (1) CAFETERIA PLANS.—The last sentence of
11 section 125(f) of such Code (defining qualified bene-
12 fits) is amended by inserting before the period at the
13 end “; except that such term shall include the pay-
14 ment of premiums for any qualified long-term care
15 insurance contract (as defined in section 7702B) to
16 the extent the amount of such payment does not ex-
17 ceed the eligible long-term care premiums (as de-
18 fined in section 213(d)(10)) for such contract”.

19 (2) FLEXIBLE SPENDING ARRANGEMENTS.—
20 Section 106 of such Code (relating to contributions
21 by an employer to accident and health plans) is

1 amended by striking subsection (c) and redesignating subsection (d) as subsection (c).

3 (c) CONFORMING AMENDMENTS.—

4 (1) Section 62(a) of such Code is amended by
5 inserting before the last sentence at the end the following new paragraph:
6

7 “(21) PREMIUMS ON QUALIFIED LONG-TERM
8 CARE INSURANCE CONTRACTS.—The deduction allowed by section 224.”.

10 (2) Sections 223(b)(4)(B), 223(d)(4)(C),
11 223(f)(3)(B), 3231(e)(11), 3306(b)(18),
12 3401(a)(22), 4973(g)(1), and 4973(g)(2)(B)(i) of
13 such Code are each amended by striking “section
14 106(d)” and inserting “section 106(c)”.

15 (3) Section 6041 of such Code is amended—

16 (A) in subsection (f)(1) by striking “(as
17 defined in section 106(c)(2))”, and

18 (B) by adding at the end the following new
19 subsection:

20 “(h) FLEXIBLE SPENDING ARRANGEMENT DEFINED.—For purposes of this section, a flexible spending
21 arrangement is a benefit program which provides employ-
22 ees with coverage under which—
23

1 “(1) specified incurred expenses may be reim-
 2 bursed (subject to reimbursement maximums and
 3 other reasonable conditions), and

4 “(2) the maximum amount of reimbursement
 5 which is reasonably available to a participant for
 6 such coverage is less than 500 percent of the value
 7 of such coverage.

8 In the case of an insured plan, the maximum amount rea-
 9 sonably available shall be determined on the basis of the
 10 underlying coverage.”.

11 (4) The table of sections for part VII of sub-
 12 chapter B of chapter 1 of such Code is amended by
 13 striking the last item and inserting the following
 14 new items:

“Sec. 224. Premiums on qualified long-term care insurance contracts.

“Sec. 225. Cross reference.”.

15 (d) EFFECTIVE DATES.—

16 (1) IN GENERAL.—Except as provided in para-
 17 graph (2), the amendments made by this section
 18 shall apply to taxable years beginning after Decem-
 19 ber 31, 2005.

20 (2) CAFETERIA PLANS AND FLEXIBLE SPEND-
 21 ING ARRANGEMENTS.—The amendments made by
 22 subsection (b) shall apply to taxable years beginning
 23 after December 31, 2007.

1 **SEC. 302. ADDITIONAL CONSUMER PROTECTIONS FOR**
2 **LONG-TERM CARE INSURANCE.**

3 (a) ADDITIONAL PROTECTIONS APPLICABLE TO
4 LONG-TERM CARE INSURANCE.—Subparagraphs (A) and
5 (B) of section 7702B(g)(2) of the Internal Revenue Code
6 of 1986 (relating to requirements of model regulation and
7 Act) are amended to read as follows:

8 “(A) IN GENERAL.—The requirements of
9 this paragraph are met with respect to any con-
10 tract if such contract meets—

11 “(i) MODEL REGULATION.—The fol-
12 lowing requirements of the model regula-
13 tion:

14 “(I) Section 6A (relating to guar-
15 anteed renewal or noncancellability),
16 other than paragraph (5) thereof, and
17 the requirements of section 6B of the
18 model Act relating to such section 6A.

19 “(II) Section 6B (relating to pro-
20 hibitions on limitations and exclu-
21 sions) other than paragraph (7) there-
22 of.

23 “(III) Section 6C (relating to ex-
24 tension of benefits).

1 “(IV) Section 6D (relating to
2 continuation or conversion of cov-
3 erage).

4 “(V) Section 6E (relating to dis-
5 continuance and replacement of poli-
6 cies).

7 “(VI) Section 7 (relating to unin-
8 tentional lapse).

9 “(VII) Section 8 (relating to dis-
10 closure), other than sections 8F, 8G,
11 8H, and 8I thereof.

12 “(VIII) Section 11 (relating to
13 prohibitions against post-claims un-
14 derwriting).

15 “(IX) Section 12 (relating to
16 minimum standards).

17 “(X) Section 13 (relating to re-
18 quirement to offer inflation protec-
19 tion).

20 “(XI) Section 25 (relating to pro-
21 hibition against preexisting conditions
22 and probationary periods in replace-
23 ment policies or certificates).

24 “(ii) MODEL ACT.—The following re-
25 quirements of the model Act:

1 “(I) Section 6C (relating to pre-
2 existing conditions).

3 “(II) Section 6D (relating to
4 prior hospitalization).

5 “(B) DEFINITIONS.—For purposes of this
6 paragraph—

7 “(i) MODEL PROVISIONS.—The terms
8 ‘model regulation’ and ‘model Act’ mean
9 the long-term care insurance model regula-
10 tion, and the long-term care insurance
11 model Act, respectively, promulgated by
12 the National Association of Insurance
13 Commissioners (as adopted as of October
14 2000).

15 “(ii) COORDINATION.—Any provision
16 of the model regulation or model Act listed
17 under clause (i) or (ii) of subparagraph
18 (A) shall be treated as including any other
19 provision of such regulation or Act nec-
20 essary to implement the provision.

21 “(iii) DETERMINATION.—For pur-
22 poses of this section and section 4980C,
23 the determination of whether any require-
24 ment of a model regulation or the model

1 Act has been met shall be made by the
2 Secretary.”.

3 (b) EXCISE TAX.—Paragraph (1) of section
4 4980C(c) of the Internal Revenue Code of 1986 (relating
5 to requirements of model provisions) is amended to read
6 as follows:

7 “(1) REQUIREMENTS OF MODEL PROVISIONS.—

8 “(A) MODEL REGULATION.—The following
9 requirements of the model regulation must be
10 met:

11 “(i) Section 9 (relating to required
12 disclosure of rating practices to consumer).

13 “(ii) Section 14 (relating to applica-
14 tion forms and replacement coverage).

15 “(iii) Section 15 (relating to reporting
16 requirements).

17 “(iv) Section 22 (relating to filing re-
18 quirements for marketing).

19 “(v) Section 23 (relating to standards
20 for marketing), including inaccurate com-
21 pletion of medical histories, other than
22 paragraphs (1), (6), and (9) of section
23 23C.

24 “(vi) Section 24 (relating to suit-
25 ability).

1 “(vii) Section 29 (relating to standard
2 format outline of coverage).

3 “(viii) Section 30 (relating to require-
4 ment to deliver shopper’s guide).

5 The requirements referred to in clause (vi) shall
6 not include those portions of the personal work-
7 sheet described in Appendix B relating to con-
8 sumer protection requirements not imposed by
9 section 4980C or 7702B.

10 “(B) MODEL ACT.—The following require-
11 ments of the model Act must be met:

12 “(i) Section 6F (relating to right to
13 return).

14 “(ii) Section 6G (relating to outline of
15 coverage).

16 “(iii) Section 6H (relating to require-
17 ments for certificates under group plans).

18 “(iv) Section 6J (relating to policy
19 summary).

20 “(v) Section 6K (relating to monthly
21 reports on accelerated death benefits).

22 “(vi) Section 7 (relating to incontest-
23 ability period).

24 “(C) DEFINITIONS.—For purposes of this
25 paragraph, the terms ‘model regulation’ and

1 ‘model Act’ have the meanings given such terms
2 by section 7702B(g)(2)(B).”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to policies issued more than 1 year
5 after the date of the enactment of this Act.

6 **TITLE IV—MISCELLANEOUS** 7 **PROVISIONS**

8 **SEC. 401. ELIMINATION OF LIMITATION ON ELIGIBILITY** 9 **FOR SUPPLEMENTAL SECURITY INCOME** 10 **BENEFITS FOR PERSONS LIVING IN PUB-** 11 **LICLY OPERATED COMMUNITY RESIDENCES,** 12 **BASED ON THE NUMBER OF RESIDENTS** 13 **SERVED BY THE FACILITY.**

14 (a) IN GENERAL.—Section 1611 of the Social Secu-
15 rity Act (42 U.S.C. 1382) is amended—

16 (1) in subsection (e)(1), by striking subpara-
17 graph (C) and redesignating subparagraphs (D)
18 through (J) as subparagraphs (C) through (I), re-
19 spectively; and

20 (2) in subparagraph (A), by striking “(E), and
21 (G)” and inserting “and (F)”;

22 (3) in subparagraph (B)—

23 (A) by striking “(G)” and inserting “(F)”;

24 and

25 (B) by striking “(E)” and inserting “(D)”;

1 (4) in subparagraph (E) (as so redesignated),
2 by striking “(E)” and inserting “(D)”;

3 (5) in subparagraph (F) (as so redesignated),
4 by striking “(H) or (J)” and inserting “(G) or (I)”;

5 (6) in subparagraph (G) (as so redesignated),
6 by striking “(G)” and inserting “(F)”;

7 (7) in subparagraph (I) (as so redesignated), by
8 striking “(G)(i)” and inserting “(F)(i)”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 subsection (a) shall apply to benefits payable for calendar
11 months beginning after the date of the enactment of this
12 Act.

○